IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.R.No.721 of 1992
Date of decision:23.3.2007

Lekh Raj Singh

.....Petitioner

v.

The State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

Present: Mr. M.S.Rakkar, Sr. Advocate with
Mr. A.S.Syan, Advocate for the petitioner.

Mr. MS Sidhu, Sr. DAG, Punjab.

JUDGMENT:

This revision petition has been filed by the petitioner against his conviction under sections 304-A/338 IPC, for which he has been sentenced as under:-

"Under Section 304-A of the IPC.	Eight months RI and to Pay a fine of Rs.1000/- In default to undergo RI for two months.
Under Section 338 of the IPC.	Four months RI and to Pay a fine of Rs.500/-. In default, one month RI."

Case of the prosecution is that on 4.8.1986, NK V.S.Lingam, driver of a Military truck, was taking R.P.Singh to Military Hospital, Pathankot, under the orders of the senior

officers. L/NK Jabbar Mal, deceased was also accompanying them. At 5.15 A.M., when the truck reached near the Railway Gate No.C.80 on the railway lines leading from Pathankot to Bharoli, the railway engine of Shalimar Express proceeding from Pathankot to Jammu struck against the truck. V.S.Lingam was slightly hurt, while Jabbar Mal and RP Singh received multiple injuries. They were taken to Military Hospital, Pathankot, where Jabbar Mal succumbed to his injuries. Lekh Raj was the Assistant Station Master, Railway Station, Bharoli, within whose jurisdiction Gate No.C/80 fell. Prem Singh was Cabinman and Thoru Ram was the Railway Gateman. FIR was registered and after investigation, all the three accused were challaned.

The prosecution examined 15 witnesses. Substance of the evidence led is as under:-

PW2 V.S.Lingam, driver of the military truck was an eye witness, who supported the version of the prosecution of death of Jabbar Mal having occurred on account of rash and negligent act of the accused. PW3 RP Singh was also an injured witness, who corroborated the said version. PW4 Subedar Shamsher Singh got conducted post-mortem examination on the dead body of Jabbar Mal. PW5 Banarassi Lal was the photographer, who took photographs. PW6 Dwarka Dass was the driver of the railway engine, who deposed that the gate was open when he was driving

the train and the engine hit the truck. PW7 Bhola Nath, Diesel Assistant also corroborated the version of PW6 Dwarka Dass. PW8 ASI Jaswant Singh and PW9 SI Malkiat Singh conducted investigation. PW13 Nand Kumar Ram deposed that he was posted as Assistant Station Master, while Lekh Raj was on duty at the time of accident. PW14 Ram Parkash was Traffic Inspector of Northern Railways at Pathankot and he produced the record of duties of Lekh Raj. Lekh Raj did not get the gate closed when the train was moving. PW15 R.K.Saini was the Deputy Chief Controller and brought the log book regarding the gate. PW16 Major RK Sharma proved the damage report of the military truck. PW1 Dr. Promila Sharma conducted post-mortem examination and proved her report Ex.PA. According to her, Jabbar Mal died as a result of Cardio respiratory failure due to septicemia as a result of multiple injuries which were ante-mortem in nature. Time between injuries and death was 6/7 days.

The accused denied the prosecution allegations relating to negligence. According to Lekh Raj, he had followed the rules and regulations before the train passed and that he had made entries in a private number book. Plea of Tharu Ram and Prem Singh who were also accused need not be discussed as they have been acquitted. The accused examined DW1 Ram Parkash, Traffic Inspector, who deposed that private number books which were

maintained, had been lost. In the private number book, which has been lost, conversation between the Station Masters of the Railway station at two ends is recorded. The Station Master then converses with the Gateman or the Cabinman, for which an entry is made.

The trial court after considering the evidence on record, accepted the case of the prosecution against the petitioner, while acquitting the co-accused, Prem Singh and Thoru Ram, inter-alia for the following reasons:-

(i)Lekh Raj, Assistant Station Master was required to convey message to the Cabinman and Gateman regarding the coming of the train.

(ii) It stood established that the gate was open.

(iii)In absence of any evidence that Lekh Raj had passed on the message to the Cabinman or the Gateman, the Cabinman or the Gateman could not be held responsible and responsibility was only of the Assistant Station Master.

The petitioner preferred an appeal to the Court of Session. The Court of Session affirmed the view taken by the trial

court.

I have heard learned counsel for the parties and perused the record.

It remains beyond doubt that gate of the railway crossing was open and the train passed, on account of which accident took place, resulting in death of Jabbar Mal.

It has been established on record that the petitioner was posted as Assistant Station Master, whose responsibility was to convey message to the Cabinman and the Gateman to close the gate. Giving of this message has not been established and, thus, Cabinman and the Gateman have been acquitted and responsibility of the petitioner has been established.

It is well-settled that in a revision against concurrent finding recorded by the courts below, interference is permissible only if the finding is not based on evidence or there is misreading of evidence.

Only contention raised is that the record was not produced in absence of which an inference could be drawn that the petitioner had passed on the message and it was the Gateman, who did not close the gate.

This contention has no merit. The evidence on record clearly establishes that no message was given by the petitioner for closing of the gate and even in absence of books, it could not be

inferred that the petitioner had given the message to the Gateman or the Cabinman, who failed to close the gate. In any case, the courts below having recorded a finding on the basis of evidence, the same is not liable to be interfered with, in exercise of revisional jurisdiction.

Learned counsel for the petitioner then submitted that having regard to the fact that the occurrence took place 21 years ago, liberal view may be taken in the matter of sentence.

We find that the Court of Session has already taken a liberal view and reduced the sentence to RI for eight months. No interference is, thus, called for with the sentence imposed.

The revision petition is dismissed.

March 23 , 2007 (Adarsh Kumar Goel)
'gs' Judge